Office-Supreme Court, U. S.
FILED
NOV 28 1951
CHARLES ELMORE CROPLEY

No. 450

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

ATLANTIC MUTUAL INSURANCE COMPANY, ET AL., FARR SUGAR CORPORATION, AMERICAN SPIRITS, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Statement	2
Reasons for Granting the Writ	6
Conclusion	15

CITATIONS

Cases:

Atlas, The, 93 U. S. 302	6, 8, 9
Bank of California v. *International Mercantile Marine Co.*, 64 F. 2d 97, certiorari denied, 290 U. S. 649	14
Bruce, W. W., The, 14 F. Supp. 894, reversed on other grounds, 94 F. 2d 834, certiorari denied *sub nom. Pacific-Atlantic S. S. Co.* v. *Weyerhaeuser Timber Co.*, 304 U. S. 567	7
Chattahoochee, The, 173 U. S. 540	7, 9, 13, 14
Floridian, The, 83 F. 2d 949, certiorari denied, 299 U. S. 577	15
Ikuno, K. v. *Morris & Co.*, 22 F. 2d 140, certiorari denied, 276 U. S. 626	14
Irrawaddy, The, 171 U. S. 187	11
Jason, The, 225 U. S. 32	11, 14
Knott v. *Botany Mills*, 179 U. S. 69	11
Liverpool Steam Company v. *Phenix Insurance Company*, 129 U. S. 397	10
Manitoba, The, 122 U. S. 97	8
May v. *Hamburg, etc. Gesellschaft*, 290 U. S. 333	11
New York, The, 175 U. S. 187	6
North Star, The, 106 U. S. 17	8
Railroad Company v. *Pratt*, 22 Wall. 123	10
Railway Company v. *Stevens*, 95 U. S. 655	10
Reid v. *Fargo*, 241 U. S. 544	14

Statutes:

Carriage of Goods by Sea Act (Act of April 16, 1936, 49 Stat. 1207, 46 U. S. C.) Sections 1301 *et seq.*:

Section 3	18
Section 3 (8)	5, 12
Section 4	21
Section 4 (2) (a)	7, 11, 13
Section 4 (3)	5, 12, 13

976773—51——1

Statutes—Continued Page
Harter Act (Act of February 13, 1893, 27 Stat. 445, 46 U. S. C. Sections 190–195):
Section 1 16
Section 2 16
Section 3 7, 10, 12, 13, 15, 17
Section 4 17
Miscellaneous:
24 Cong. Rec. 1291–2, 52d Cong., 2d Sess 11
Hearings before the House Committee on Merchant Marine and Fisheries, 74th Cong., 2d Sess., pp. 49–68 13
Hearings before the Senate Committee on Commerce, 74th Cong., 1st Sess., pp. 52–59, 61–63 13
Knauth, *The American Law of Ocean Bills of Lading* (1947 ed.) 176 6

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 450

UNITED STATES OF AMERICA, PETITIONER

v.

ATLANTIC MUTUAL INSURANCE COMPANY, ET AL., FARR SUGAR CORPORATION, AMERICAN SPIRITS, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on August 31, 1951.

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 101) is reported at 90 F. Supp. 836. The opinion of the Court of Appeals for the Second Circuit (R. 135) is reported at 191 F. 2d 370.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on August 31, 1951.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

It is standard practice for ocean bills of lading to include a provision that in the event of a collision resulting solely from the negligent navigation of both the carrier and the other vessel, the cargo owners shall indemnify the carrier against all liability to the non-carrying vessel on account of damages payable to the carrier's cargo by the non-carrying vessel.

The question presented is whether this so-called "Both-to-Blame" clause contravenes the public policy expressed in the Harter Act of 1893, and its successor, the Carriage of Goods by Sea Act of 1936.

STATUTES INVOLVED

The pertinent portions of the Harter Act (Act of February 13, 1893, 27 Stat. 445, 46 U. S. C. Sections 190–195) and of the Carriage of Goods by Sea Act (Act of April 16, 1936, 49 Stat. 1207, 46 U. S. C., Sections 1301, *et seq.*) are set forth in the Appendix, *infra,* pp. 16–24.

STATEMENT

This litigation arose out of a collision in New York Harbor between the S. S. "Nathaniel Bacon", owned by the United States, and the M. V. "Esso Belgium", owned by Belgian Overseas Transport, S. A. (R. 101–102). Both vessels and

the cargo aboard the "Nathaniel Bacon" sustained damage (R. 102).

The United States libelled the "Esso Belgium" to recover for the damage done the "Nathaniel Bacon" (R. 7). Respondent insurance companies, which had paid the "Nathaniel Bacon" cargo owners their losses, intervened as libellants to assert their subrogated rights (R. 17). A cross-libel was filed by the owners of the "Esso Belgium" to recover from the United States for the damage suffered by the "Esso Belgium" (R. 28). The damage claimed by the "Esso Belgium" included the amount of the "Esso Belgium's" liability to the cargo of the "Nathaniel Bacon". The United States therefore impleaded the cargo owners, seeking indemnity from them pursuant to the so-called "Both-to-Blame" clauses contained in the bills of lading issued by the "Nathaniel Bacon" to them (R. 40).

The libels were consolidated (R. 136) and all parties stipulated that the collision occurred through the negligence and faulty navigation of both vessels, and that no part of the loss sustained by any of the parties was the result of any fault or neglect of the shippers, consignees, owners, or insurers of cargo (R. 72). Seaworthiness of the "Nathaniel Bacon" and proper stowage of her cargo were stipulated (R. 72). It was further stipulated that the cargo owners were entitled to 100% recovery against the owners of the "Esso

Belgium" (R. 75) and that the latter were entitled to recover part of the amount of those damages from the United States, as owner of the "Nathaniel Bacon" (R. 75).[1]

The only issue remaining between the parties was whether the United States could recover from the cargo owners the damages which it would have to pay to "Esso Belgium" on account of the latter's liability to the cargo owners. It was undisputed that under Paragraph 9 of the bills of lading—the so-called "Both-to-Blame" clause—the United States was entitled to indemnity in that amount. That clause provided (R. 58) as follows:

> If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners

[1] Normally, in a both-to-blame case the damages are borne equally by the two vessels; in this case, by agreement, the damages are to be borne two-thirds by the "Esso Belgium" and one-third by the "Nathaniel Bacon".

of said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.[1a]

The validity of the clause was thus put squarely in issue.

The district court held that the "Both-to-Blame" clause was not invalid as violative of Sections 3 (8) or 4 (3) of the Carriage of Goods by Sea Act (*infra*, pp. 18, 23) and that it did not contravene any public policy, but rather implemented the policy proclaimed by that Act and the Harter Act (*infra*, p. 16). On appeal, the judgment of the district court was reversed. The

---

[1a] As the court below pointed out (R. 137, fn. 1): "This is the form of the 'Both-to-Blame' clause which has been in use in the North Atlantic Freight Conference since Sept. 1, 1937. Robinson, Admiralty 872, 873, 1939; Knauth, Ocean Bills of Lading 95, 136, 175, 3d Ed. 1947. An earlier form in use before the passage of the Carriage of Goods by Sea Act in 1936 (see Knauth, *op. cit. supra*, at 254) was upheld in *The W. W. Bruce*, D. C. E. D. N. Y., 14 F. Supp. 894; but on appeal the court found that seaworthiness of the vessel in all respects had not been proven, thus rendering it unnecessary to consider 'the much debated legal question as to the validity of the both-to-blame collision clause.' 2 Cir., 94 F. 2d 834, 837, certiorari denied *Pacific-Atlantic S. S. Co.* v. *Weyerhaeuser Timber Co.*, 304 U. S. 567."

court of appeals held, Judge Augustus Hand dissenting, that the "Both-to-Blame" clause was invalid because it violated public policy and was not expressly authorized by any statute or judicial decision.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it has misconceived the public policy of the Carriage of Goods by Sea Act, and its predecessor the Harter Act, in a manner which seriously affects the relationship between ocean carriers and their shippers. For many years it has been common practice for these carriers to provide in their bills of lading that, in the event of a collision resulting from the negligent navigation of both the carrier and the other vessel, the shipper shall indemnify the carrier against all liability to the non-carrying vessel on account of damage to the carrier's cargo.[1] This so-called "Both-to-Blame" clause has now been declared invalid by the court below as contrary to public

[1] The "Both-to-Blame" clause is significant only in suits in the United States. Under United States law the shipper is permitted to recover 100% of his damages against the non-carrying vessel. *The Atlas*, 93 U. S. 302; *The New York*, 175 U. S. 187. Other maritime nations have adopted the rule of the Collision Convention of 1910 under which cargo can recover from the non-carrying vessel only an amount proportionate to the degree of fault of that vessel. See Knauth, *The American Law of Ocean Bills of Lading* (1947 ed.) 176.

policy.[3] The question of its validity was characterized by that court as "vastly important" (R. 135), and of such difficulty that no sure answer could be expected until this Court had passed upon it (R. 137). Although we disagree with the court of appeals' conclusion on the merits, we agree with its estimate of the importance of the question and believe with it that this case presents a particularly appropriate occasion for the exercise of this Court's discretionary review jurisdiction.

"Both-to-Blame" clauses—which today are a standard part of ocean bills of lading—came into use in response to this Court's decision in *The Chattahoochee*, 173 U. S. 540, in 1899. Section 3 of the Harter Act (Act of February 13, 1893, 27 Stat. 445, 46 U. S. C. 192, *infra*, p. 17) had made carriers by sea immune from liability to their cargo on account of negligent navigation if the carrier had exercised due diligence to make the ship seaworthy.[4] In *The Chattahoochee*, a suit arising from a both-to-blame collision, this Court held that the non-carrying vessel, which had paid

[3] The validity of the clause was upheld in *The W. W. Bruce*, 14 F. Supp. 894 (E. D. N. Y.), reversed on other grounds, 94 F. 2d 834 (C. A. 2), certiorari denied *sub nom. Pacific-Atlantic S. S. Co.* v. *Weerhaeuser Timber Co.*, 304 U. S. 567.

[4] That provision was continued in section 4 (2) (a) of the Carriage of Goods by Sea Act, Act of April 16, 1936, 49 Stat. 1207, 46 U. S. C. 1301, *et seq.* (*infra*, p. 22).

to the carrier's cargo 100% of the damages to cargo,[5] could recover from the carrier, as part of its collision damages, 50% of that amount. The effect of the decision was to make the carrier, despite Section 3 of the Harter Act, indirectly liable to its cargo for 50% of the latter's damage resulting from the carrier's negligent navigation. Thus, although the carrier was immune from liability to its cargo in case of damage resulting from negligent navigation where the carrier was wholly at fault, it was liable for 50% of those damages where it was only partly at fault. The "Both-to-Blame" clause avoids this anomalous result by allowing the carrier to recoup from its cargo any amount which the carrier has paid to the non-carrying vessel on account of damage to the carrier's cargo. As the District Court pointed out (R. 111), it implements the statutory policy of relieving the shipowner from liability to its cargo arising from negligent navigation.[6]

---

[5] It had early been established that where both vessels were to blame the cargo could recover 100% of its damages from either the carrier or the non-carrying vessel. *The Atlas*, 93 U. S. 302.

[6] Previous decisions of this Court had established the rule that in a both-to-blame collision each ship is liable for one-half of the total amount of damages. The ship suffering the lesser damage is required to pay the other one-half the difference between the amount of its damages and the amount of the other ship's damages. *The North Star*, 106 U. S. 17; *The Manitoba*, 122 U. S. 97. Under this so-called "divided damages" rule, the award of damages to cargo, in case of

The court of appeals rested its decision on the premise that the Harter and Carriage of Goods by Sea Acts reaffirmed a general public policy

collision resulting from negligent navigation of one or both vessels, is as follows:

1. Where the carrying ship is solely at fault: The cargo recovers nothing. Section 3 of the Harter Act, *infra*, p. 17.

2. Where the non-carrying vessel is solely at fault: The cargo recovers 100% of its damages from that vessel. *The Atlas*, 93 U. S. 302.

3. Where both vessels are at fault and there is no both-to-blame clause in the bill of lading, or, as under the decision below, where that clause is given no effect: The cargo recovers 100% of its damages from the non-carrier which, in turn, recovers 50% of that amount from the carrier. *The Chattahoochee*, 173 U. S. 540. (It should be noted that "recover" is used loosely here to describe the effect of the *Chattahoochee* decision. Under that decision, the non-carrier is allowed to include in its damages the amount of damages paid to cargo. Since each vessel is liable for one-half the total amount of damages to both vessels, the result in a particular case may be that there is no actual "recovery" by the non-carrier. The effect in all cases, however, is to diminish the amount due from, or increase the amount due to, the non-carrier by 50% of the amount of damage to cargo.) Thus, the cargo in effect recovers 50% of the amount of its damages from each vessel.

4. Where both vessels are at fault and there is a both-to-blame clause which is given effect: as in case 3 above, the cargo recovers 100% of its damages from the non-carrier which, in turn, recovers 50% of that amount from the carrier. The carrier, however, then recoups from cargo the amount paid to the non-carrier on account of damage to cargo. The effect is to attribute half of the damages to the fault of the non-carrying vessel and allow cargo to recover that amount, as in case 2 above. The other half is attributed to the fault of the carrying vessel and no recovery is allowed, as in case 1 above. This result is consistent both with the Harter Act and with the divided damages rule.

against contractual, as distinguished from legislative, exemptions of ocean carriers from liability for negligence. That court considered the immunity from liability for negligent navigation provided by those Acts (*infra*, pp. 17, 22) as an exception to the general policy which, as such, was to be strictly construed. It therefore held that the "Both-to-Blame" clause could not be valid unless clearly authorized by some specific provision of the Harter Act or the Carriage of Goods by Sea Act. We submit that the premise is invalid, that contractual provisions which are reasonable and not inconsistent with the policy of the Acts should be sustained, and that the consensual agreement embodied in the "Both-to-Blame" clause is wholly consistent with and, indeed, implements the policy embodied in Section 3 of the Harter Act.

It is true that prior to the passage of the Harter Act in 1893, a carrier by sea—as all carriers—was liable to a shipper for damages to cargo resulting from any cause except an act of God or the public enemy, and that numerous attempts by carriers to limit their liability by contract were struck down by the courts as contrary to public policy. *E. g., Liverpool Steam Company* v. *Phenix Insurance Company*, 129 U. S. 397; *Railway Company* v. *Stevens*, 95 U. S. 655; *Railroad Company* v. *Pratt*, 22 Wall. 123. It is

likewise true that the Harter Act was in part a codification of those judicial decisions. But in Section 3 of that Act, Congress proclaimed—with respect to liability for negligent navigation—a public policy exactly the reverse of that formerly prevailing. See 24 Cong. Rec. 1291–2, 52d Cong., 2d Sess. Where the prior law had forbidden contractual limitations on liability for negligent navigation, Section 3 made the carrier immune from such liability, provided the carrier had exercised due diligence to make the vessel seaworthy in all respects. This Court has recognized the change of policy effected by Section 3 and has given effect to bill of lading clauses designed to implement the new policy. *The Jason*, 225 U. S. 32, 55.[1]

If, then, the policy of the Harter Act is to place the risk of negligent navigation on the shipper—at least *vis-á-vis* the carrier—the "Both-to-Blame" clause can hardly be said to contravene that policy. As the District Court pointed out (R. 106), "that is exactly what the Both-to-Blame clause in substance purports to do." Since the change of policy announced by the Harter Act was continued in effect by Section 4 (2) (a) of the Carriage of Goods by Sea Act (*infra*, p. 22), and indeed was strengthened in

[1] See also *The Irrawaddy*, 171 U. S. 187, 193; *Knott* v. *Botany Mills*, 179 U. S. 69, 71, 73; *May* v. *Hamburg, etc. Gesellschaft*, 290 U. S. 333, 342–343.

one important respect,[8] there is at present no public policy with which the clause can be said to clash.[9]

Respondents' arguments that Sections 3 (8) and 4 (3) of the Carriage of Goods by Sea Act express a public policy against, or indeed specifically prohibit, the "Both-to-Blame" clause, are, as the District Court held (R. 109), unpersuasive.

Section 3 (8) provides that any contract which relieves the carrier from liability arising from "negligence, fault, or failure in the duties and obligations provided *in this section*, or lessening such liability otherwise as is provided in this Act, shall be null and void and of no effect. A benefit of insurance clause in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability." (Italics added.) When that provision is read, as it must be, in the context of the Act as a whole, it is apparent that it was not intended to cover the both-to-blame situation. The "duties and obligations provided in this section" deal only with the necessity for the carrier to provide a seaworthy

[8] The immunity afforded by Section 3 of the Harter Act was available to the carrier only if it had exercised "due diligence" to make the vessel seaworthy in all respects. The Carriage of Goods by Sea Act made the immunity unconditionally available to the carrier.

[9] The Court of Appeals found it unnecessary to decide this question since it was satisfied that neither section contained an express authorization of the "Both-to-Blame" clause.

vessel, etc., and do not touch upon his liability for negligent navigation. As already seen, the carrier is relieved by the provisions of Section 4(2)(a) from liability to his cargo for negligent navigation.

Section 4 (3) clearly has no application to the "Both-to-Blame" clause. It provides that the "shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper." The agreement expressed in a "Both-to-Blame" clause does not create any such liability of the cargo to the carrier. It simply provides that the carrier may recoup from the cargo any monies paid indirectly to cargo on account of the carrier's negligent navigation. Its effect is merely to remove an indirect liability from the carrier to the cargo which could not, under Section 3 of the Harter Act, have been asserted directly. Moreover, when Section 4 (3) was before Congress, it was proposed that it be amended to outlaw specifically the "Both-to-Blame" clause. The proposal was rejected. See Hearings before the Senate Committee on Commerce on S. 1152, 74th Cong., 1st Sess., pp. 52–59, 61–63; Hearings before the House Committee on Merchant Marine and Fisheries on S. 1152, 74th Cong., 2d Sess., pp. 49–68.

Nor is there any policy expressed in the decisions of this Court or other federal courts with which the clause is in conflict. *The Chatta-*

hoochee, 173 U. S. 540, held only that Section 3 of the Harter Act did not affect the liability of an ocean carrier for faulty navigation except to its own cargo. Consequently, this Court allowed recovery by one vessel against another after a both-to-blame collision and allowed the non-carrying vessel to recover as part of its damages 50% of the amount it had paid as damages to the cargo of the carrying vessel. In so holding, this Court emphasized that its decision was concerned solely with "the relations of the two colliding vessels to each other" (173 U. S. at 555). The "Both-to-Blame" clause does not affect that relationship; it is concerned solely with the relationship between carrier and cargo.

Indeed, the decision below seems inconsistent with this Court's decision in *The Jason, supra* (225 U. S. 32), which upheld, against a challenge based on the Harter Act, a provision in a bill of lading which required a shipper to contribute to general average in case of peril resulting from the carrier's negligent navigation.[10] This Court

[10] Other examples of contractual clauses limiting the carrier's liability or inhibiting the assertion by the cargo of that liability which have been upheld by the courts are: clauses limiting liability to a stipulated amount in the absence of a declared higher value, *Reid* v. *Fargo*, 241 U. S. 544; clauses limiting the time in which suit must be brought, *K. Ikuno* v. *Morris & Co.*, 22 F. 2d 140 (C. A. 4), certiorari denied, 276 U. S. 626, or limiting the time in which notice of claim must be made, *Bank of California* v. *International Mercantile Marine Co.*, 64 F. 2d 97 (C. A. 2), certiorari denied, 290 U. S. 649; clauses relieving the carrier from lia-

relied specifically on Section 3 of the Harter Act and pointed out that, although Section 3 did not *ex propia vigore* require contribution from cargo, it expressed a policy which permitted the shipowner to require contribution in the contract. The Court stated its holding in laguage as applicable here as there (pp. 55–56); "* * * since the clause contained in the bills of lading * * * admits the shipowner to share in the general average only under circumstances where by the act he is relieved from responsibility, the provision in question is valid * * *." Similarly, since the "Both-to-Blame" clause gives the carrier a right of recoupment only under circumstances where the Act relieves it of liability, it is a permissible consensual implementation of the Act's policy.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1951.

---

bility for unseaworthiness not discoverable by the exercise of due diligence, *The Floridian*, 83 F. 2d 949 (C. A. 2), certiorari denied, 299 U. S. 577.

APPENDIX

1. The pertinent portions of Sections 1–4 of the Harter Act (Act of February 13, 1893, 27 Stat. 445, 46 U. S. C. Secs. 190–193) provide as follows:

> SEC. 1. It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.
>
> SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully

handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

SEC. 4. That it shall be the duty of the owner or owners, masters, or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such

document shall be prima facie evidence of the receipt of the merchandise therein described.

2. Sections 3 and 4 of the Carriage of Goods by Sea Act of 1936 (Act of April 16, 1936, 49 Stat. 1207, 1208–10, 46 U. S. C. Sec. 1301, 1303, 1304) provide as follows:

> SEC. 3 (1) The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—
>
> (a) Make the ship seaworthy;
>
> (b) Properly man, equip, and supply the ship;
>
> (c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.
>
> (2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
>
> (3) After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—
>
> (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
>
> (b) Either the number of packages or pieces, or the quantity or weight, as the

case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods: *Provided,* That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3) (a), (b), and (c), of this section: *Provided,* That nothing in this Act shall be construed as repealing or limiting the application of any part of the Act, as amended, entitled "An Act relating to bills of lading in interstate and foreign commerce", approved August 29, 1916 (U. S. C., title 49, secs. 81–124), commonly known as the "Pomerene Bills of Lading Act."

(5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

(6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at

the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

(7) After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading: *Provided*, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the

issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a "shipped" bill of lading.

(8) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

SEC. 4. (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) Fire, unless caused by the actual fault or privity of the carrier;

(c) Perils, dangers, and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of war;

(f) Act of public enemies;

(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: *Provided,* That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;

(k) Riots and civil commotions;

(l) Saving or attempting to save life or property at sea;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(n) Insufficiency of packing;

(o) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence; and

(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden

of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

(3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

(4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided, however,* That if the deviation is for the purpose of loading or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable.

(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Pro-*

vided, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

(6) Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

U. S. GOVERNMENT PRINTING OFFICE: 1981